IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.336 OF 1993.

Union of India : Appellants.

versus

M/s.Mulchand and sons : Respondents.

Mr.A.N.Samant for the appellants.

Mr.G.M.Khambete for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 28th January 2005.

ORAL ORDER

1. This appeal is filed by the Union of India challenging the order of Railway Claims Tribunal dated 4th December 1991 in Original Application No.386 of 1990 by which the appellant/Union of India was ordered to pay sum of Rs.5142/- to the applicant with interest at 10% p.a. from the date of the application till realisation on Rs.5092/- with proportionate costs.

2. The total claim made by the applicant/respondent before the tribunal was Rs.16830/- towards compensation for damages caused due to water. The railway issued cheque of Rs.9290/- The applicant accepted the cheque under protest and demanded the balance amount.

3. Mr.Samant, appearing for the appellant, raised only one point and, i.e., according to him, when the railway has issued cheque for major part of the compensation claimed, then looking to the bonafide of the railway, the rate of interest on the decretal amount should not have been 10%. He contended that it should have been 6% p.a..

4. I find considerable force in this submission. Because while discussing Issue No.1, the tribunal has recorded that railway had issued cheque of Rs.9290/-; that they were sending the cheque in full and final settlement of claim and, the cheque should be sent back if it was not acceptable to the applicant. In view of this gesture on the part of railway, the rate of interest awarded is required to be reduced. Hence the order :-

:ORDER:

Appeal is partly allowed.

Interest awarded by the Tribunal at 10% is reduced to 6%.

No order as to costs of this appeal.

[D.G.DESHPANDE]

28/01/2005 JUDGE.